UNITED NATIONS

General Assembly

FIFTY-FIRST SESSION

*Official Records*

SIXTH COMMITTEE
62nd meeting
held on
Friday, 4 April 1997
at 3 p.m.
New York

SUMMARY RECORD OF THE FIRST PART* OF THE 62nd MEETING

Chairman: Mr. YAMADA (Japan)
(Chairman of the Working Group of the Whole for the Elaboration of a Convention on the Law of the Non-Navigational Uses of International Watercourses)

CONTENTS

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued)

* The summary record of the second part of the meeting will be published as A/C.6/51/SR.62/Add.1.

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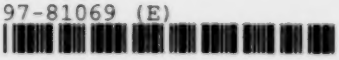
Distr. GENERAL
A/C.6/51/SR.62
29 August 1997
ENGLISH
ORIGINAL: FRENCH

97-81069 (E)



Mr. Yamada (Chairman of the Working Group of the Whole for the Elaboration of a Convention on the Law of the Non-Navigational Uses of Watercourses) took the Chair.

The meeting was called to order at 4.05 p.m.

AGENDA ITEM 144: CONVENTION ON THE LAW OF THE NON-NAVIGATIONAL USES OF INTERNATIONAL WATERCOURSES (continued) (A/C.6/51/NUW/WG/L.3, A/C.6/NUW/WG/L.3/Add.1, A/C.6/51/NUW/WG/L.4, A/C.6/51/NUW/WG/CRP.92, 93 and 94)

1. The CHAIRMAN, submitting his proposal concerning articles 5, 6 and 7 (A/C.6/51/NUW/WG/CRP.94), said that in the third line of article 7, paragraph 2, the words "taking into account" should be replaced by the words "duly taking into account", and that in the fifth line of the same paragraph, the words "to mitigate and eliminate" should be replaced by "to eliminate and mitigate". The second amendment was taken from an interpretative text drafted by the Expert Consultant.

2. Mr. ROSENSTOCK (Expert Consultant) introduced the following interpretative text, which was intended to state as clearly as possible that under no circumstances did the obligation to mitigate harm permit avoidance of the obligation to eliminate it: "In the event that such steps as are required by article 7, paragraph 2, do not eliminate the harm, such steps as are required by article 7, paragraph 2, shall then be taken to mitigate the harm."

3. The CHAIRMAN invited the delegations to reach a decision on his proposal concerning articles 5, 6 and 7 (A/C.6/51/NUW/WG/CRP.94), as amended and taken from the interpretative text introduced by the Expert Consultant.

4. Mr. ISKIT (Turkey) said in regard to article 6 that while he could accept the deletion of the word "pedalogical", he had reservations as to the drafting of articles 5 and 7. Concerning article 5, the word "interests" could give rise to various interpretations and was too vague, in view of the importance of the article. As for the text of article 7, despite the improvements made by the Chairman, the expression "duly taking account" still lacked precision, particularly concerning the relative priority of the principles stated in articles 5 and 7. Consequently, his delegation could not accept the cluster of articles in question and requested that the matter should be put to the vote.

5. Ms. VARGAS de LOSADA (Colombia) said that, as it stood, the Chairman's proposal was unacceptable. Her delegation was not opposed to its adoption by consensus if a majority of delegations were in favour of it, but she wished to reserve her position.

6. Ms. GAO Yanping (China) said that the amended proposal did not resolve the imbalance between upstream and downstream States, which was why she could not accept it.

7. At the request of the representative of Turkey, a recorded vote was taken on the proposal of the Chairman, as amended and taken from the interpretative text introduced by the Expert Consultant:

In favour: Algeria, Austria, Bangladesh, Belgium, Brazil, Canada, Chile, Denmark, Finland, Germany, Holy See, Hungary, Iran (Islamic Republic of), Israel, Italy, Jordan, Liechtenstein, Malawi, Malaysia, Mexico, Mozambique, Myanmar, Namibia, Netherlands, Paraguay, Portugal, Republic of Korea, Romania, Russian Federation, Switzerland, Syrian Arab Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Thailand, Tunisia, Uruguay, Venezuela, Viet Nam.

Against: China, France, Turkey, United Republic of Tanzania.

Abstaining: Argentina, Bolivia, Bulgaria, Colombia, Czech Republic, Egypt, Ecuador, Ethiopia, Greece, India, Japan, Lebanon, Mali, Mongolia, Pakistan, Rwanda, Slovakia, South Africa, Spain, Sudan, The former Yugoslav Republic of Macedonia, Zimbabwe.

8. The proposal of the Chairman, as amended and taken from the interpretative text introduced by the Expert Consultant, was adopted by 38 votes to 4, with 22 abstentions.*

9. Mr. HAMID (Pakistan) said that his delegation had abstained from voting because it had not yet received instructions from his Government.

10. Mr. AL-WITRI (Iraq) said that he had voted in favour of the proposal, but that his vote had not been recorded.

11. Mr. RAO (India) explained that his delegation had abstained from voting because, despite the Chairman's commendable efforts, he still regarded the drafting of the cluster of articles as unsatisfactory with regard to the linkage between articles 5 and 7, and his reservations concerning article 5 were well known.

12. Mr. LAVALLE VALDÉS (Guatemala) pointed out that his vote had not been recorded and that his delegation wished to abstain.

13. Ms. GAO Yanping (China), in view of the results of the vote, said she wondered about the anticipated effects of the convention and the number of countries which would be in a position to accept it. She stressed that the measure of resorting to a vote was a dangerous departure from the traditions of the Sixth Committee.

14. Mr. GONZALEZ (France) stated that his delegation would prefer to ensure at all costs that disputed articles were not adopted, as their adoption could have adverse repercussions for the future of the convention. His delegation had voted against the proposal because, in association with articles 5 and 6, the

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* See paras. 10, 12 and 26 below.

provisions of article 7 provided the beginnings of a regime of responsibility without defining either its terms or its scope, which was unlikely to resolve possible disputes between riparian States and could even complicate them.

15. Mr. CAFLISCH (Observer for Switzerland) explained that his delegation had voted in favour of the Chairman's proposal, on the one hand because it feared that work would be completed without any clear decision being made, and on the other hand because it had some concerns in regard to the process of the codification and progressive development of international law. It still believed, however, that the drafting of article 7, paragraph 2, was not very satisfactory.

16. Mr. MOUNKHOU (Mongolia) said that he had abstained from voting in the belief that the last-minute improvements made to article 7, paragraph 2, were insufficient.

17. Mr. SABEL (Israel) said that his delegation had voted in favour of the proposal because it was an overall proposal. However, it would have preferred a better balance between articles 5 and 7.

18. Mr. PASTOR-RIDRUEJO (Spain) said that he had abstained from voting because he felt that the improvements made to article 7, paragraph 2, were inadequate and that the text was still imbalanced. He believed that additional efforts should have been made to achieve a consensus on the overall proposal. In his view, the method of adoption used did not further the process of codifying international law.

19. Mr. ŠMEJKAL (Czech Republic) said that his delegation had abstained from voting in view of the most recent amendments to the text. It would otherwise have voted against the proposal, as it believed that article 7, paragraph 2, did not properly reflect the relationships between the obligation of prevention and the principle of equitable and reasonable utilization.

20. Mr. BOCALANDRO (Argentina) explained that his delegation had abstained from voting because it believed that the convention should establish a true balance which suitably reflected the obligation to cause no significant harm. That obligation was objective and, in accordance with international customary law, should not depend on subjective considerations, such as those linked to intent.

21. Mr. NEGA (Ethiopia) and Mr. VARŠO (Slovakia) stated that their delegations had abstained from voting, as in their judgement article 7, paragraph 2, was insufficiently balanced against article 5.

22. Mr. JAAFAR (Lebanon) said that he had abstained from voting because of the (underlined) phrase which had been added to article 5, paragraph 1.

23. Mr. LOIBL (Austria) said that he would have preferred a more balanced text, particularly in the case of article 7, paragraph 2, but had voted in favour of the proposal in his concern to further the codification and progressive development of international law.

24. Mr. SALINAS (Chile) said that, despite his belief that the initial drafting was more balanced in the case of articles 5 and 7, which enshrined the most important principles of the convention, he had nevertheless joined the consensus for the same reasons as the previous speaker.

25. Ms. VARGAS de LOSADA (Colombia) said that she had abstained from voting, despite her opposition to the Chairman's proposal, because she did not wish to go against the general will.

26. Mr. SWA (Myanmar) said that he had voted in favour of the proposal, but wished to withdraw his vote and take no part in the voting.

27. Mr. PATRONAS (Greece) said that he had abstained from voting because he believed that the vote was neither useful nor necessary and that the "reasonable period of time" provided for in paragraph 4 of the annex to General Assembly resolution 51/206 had not been observed. His delegation would have voted in favour of the Chairman's proposal if it had not been amended, but had abstained in order not to weaken the consensus by voting against the proposal.

28. Mr. HABIYAREMYE (Rwanda) said that he had abstained from voting because article 7, paragraph 2, did not meet with his approval in view of its relationship with articles 5 and 6. Moreover, he had not had the opportunity to consult with the authorities in his country before accepting such an obligation.

29. Mr. YAHAYA (Malaysia) said that he had voted in favour of the Chairman's proposal for the same reasons as the Austrian delegation.

30. Mr. NABER (Jordan) said that he had voted in favour of the Chairman's proposal, as it represented a compromise, but that a better balance between articles 5 and 7 should have been found.

31. Mr. MANONGI (United Republic of Tanzania) said that he had voted against the Chairman's proposal, since, in his view, the Working Group of the Whole, the Sixth Committee and the General Assembly could have pursued negotiations towards a more balanced text. He had not lost hope that such would occur.

32. Mr. KASME (Syrian Arab Republic) said that he had voted in favour of the proposal in a spirit of consensus, but would have preferred to see a reference in article 5 to the obligation to cause no harm.

33. Mr. GONZALEZ (France), declining to join the consensus on a text which justified his apprehensions, said that the Working Group could not officially take a decision on the draft convention as a whole.

34. The CHAIRMAN proposed that the Working Group should first adopt the text of the convention by article. He proposed adoption of the preamble with the retention, in the fifth line, of the words "and sustainable", which appeared between square brackets in document A/C.6/51/NUW/WG/L.3/Add.1.

35. The preamble was adopted.

Article 1

36. Article 1 was adopted.

Article 2

37. Mrs. FAHMY (Egypt) wished to place on record the fact that, for her country, the word "groundwaters", in the sense of article 2, paragraph (a), formed an integral part of the same system as surface waters. The expression therefore denoted the groundwaters which flowed into a common terminus with surface waters, as well as those which branched off and did not flow into a common terminus, but were part of the system.

38. Mr. ISKIT (Turkey) said that he reserved his position on paragraph (a), which should not include groundwaters, as well as on paragraph (b), which did not take account of the difference between watercourses which marked a border and transboundary watercourses. Mr. AMARE (Ethiopia) and Mr. JAAFAR (Lebanon) shared his view concerning paragraph (a).

39. Article 2 was adopted.

Article 3

40. At the request of the representative of France, a recorded vote was taken on the text of article 3 of the draft Convention:

In favour: Algeria, Argentina, Belgium, Brazil, Canada, Chile, Denmark, Egypt, Finland, Germany, Greece, Holy See, Hungary, Iran (Islamic Republic of), Italy, Lebanon, Malaysia, Mexico, Mozambique, Netherlands, Norway, Pakistan, Republic of Korea, Romania, Russian Federation, Syrian Arab Republic, South Africa, Spain, Sudan, Thailand, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet Nam.

Against: Ethiopia, France, Turkey.

Abstaining: Austria, Bangladesh, Bolivia, Bulgaria, China, Colombia, Czech Republic, Ecuador, India, Israel, Japan, Jordan, Liechtenstein, Malawi, Portugal, Rwanda, Slovakia, Switzerland, The former Yugoslav Republic of Macedonia, United Republic of Tanzania, Zimbabwe.

41. Article 3 was adopted by 36 votes to 3, with 21 abstentions.*

42. Mr. AMER (Egypt) said that he had not voted in favour of the proposal, but had abstained.

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* See para. 42 below.

43. Mr. GONZALEZ (France) said that he had requested a vote on article 3 because, in his view, it was particularly important in that it determined the nature of the convention, the manner of its implementation and its potential effects on existing or future agreements. In his country's opinion, paragraph 3 of the article constituted a limitation on the freedom of States to enter into future watercourse agreements and the common interpretation given to it was insufficient to remove the ambiguity on that point. Moreover, paragraphs 5 and 6 were ambiguous as to whether or not the convention had additional value and were thus likely to create legal uncertainty.

44. Mr. BOCALANDRO (Argentina) said that he had voted for the proposal on the understanding that article 3, in particular paragraph 2 thereof, did not entail a review of existing agreements and did not affect the negotiation of future agreements.

45. Mr. ISKIT (Turkey) said that he had voted against the proposal because the version of article 3 which had just been adopted did not state as clearly as the version proposed by Italy (A/C.6/NUW/WG/CRP.75) that the convention should serve as a framework for future watercourse agreements.

46. Mr. ENAYAT (Islamic Republic of Iran) said that he had voted for the proposal, but would have abstained if the vote had concerned paragraph 2 alone.

47. Mr. AMARE (Ethiopia) said that he had voted against the article because his delegation believed that parties to watercourse agreements should review any provisions of such agreements that were contrary to the fundamental principles set forth in the Convention, whereas paragraph 2 made such harmonization optional.

48. Mr. BENÍTEZ SAÉNZ (Uruguay) had voted in favour of article 3 on the understanding that paragraph 2 thereof would affect under no circumstances existing agreements.

Articles 4 to 9

49. Articles 4, 5, 6, 7, 8 and 9 were adopted.

Article 10

50. Mr. ISKIT (Turkey), supported by Mr. AMARE (Ethiopia) and Mr. HABIYAREMYE (Rwanda), expressed a reservation concerning article 10, from which he would like to see the word "custom" excluded.

51. Mr. JAAFAR (Lebanon) expressed a reservation concerning article 10, paragraph 2, on the grounds that it failed to mention the imperative to provide for vital water needs in view of natural population growth.

52. Article 10 was adopted.

Article 11

53. Article 11 was adopted.

Article 12

54. Mr. ISKIT (Turkey) said that, with the exception of article 11, he reserved his position on part III in its entirety.

55. Mr. JAAFAR (Lebanon) expressed a reservation concerning article 12, paragraph 1.

56. Mr. AMARE (Ethiopia) said that he reserved his position on part III in its entirety.

57. Mr. HABIYAREMYE (Rwanda) expressed a general reservation concerning part III in view of the deletion of the eighth preambular paragraph.

58. Article 12 was adopted.

Articles 13 to 16

59. Articles 13, 14, 15 and 16 were adopted.

Article 17

60. Mr. JAAFAR (Lebanon) expressed a reservation concerning article 17, paragraph 3.

61. Article 17 was adopted.

Articles 18 and 19

62. Articles 18 and 19 were adopted.

Article 20

63. Ms. GAO Yanping (China) requested that her country's reservation concerning article 20 should be placed on record.

64. Mr. AL MUFTI (Sudan), supported by Mr. HABIYAREMYE (Rwanda), Mr. ISKIT (Turkey) and Mr. JAAFAR (Lebanon), said that he reserved his position concerning use of the word "ecosystems".

65. Article 20 was adopted.

Article 21

66. Mr. PEDRAZA (Bolivia), joined by Ms. GAO Yanping (China), expressed a reservation concerning article 21, paragraph 3, subparagraphs (a), (b) and (c).

67. Article 21 was adopted.

Article 22

68. Ms. GAO Yanping (China) expressed the same reservations concerning article 22 as those concerning article 20.

69. Mr. AL MUFTI (Sudan), Mr. ISKIT (Turkey) and Mr. HABIYAREMYE (Rwanda) expressed a reservation concerning use of the word "ecosystem" in article 22.

70. Article 22 was adopted.

Article 23

71. Mr. ISKIT (Turkey) maintained his reservations concerning the last part of the article which read "taking into account generally accepted international rules and standards."

72. Article 23 was adopted.

Articles 24 to 31

73. Articles 24, 25, 26, 27, 28, 29, 30 and 31 were adopted.

Article 32

74. Mr. SVIRIDOV (Russian Federation), Mr. AMARE (Ethiopia), Mr. RAO (India), Mr. HABIYAREMYE (Rwanda), Mr. AL MUFTI (Sudan), Ms. VARGAS de LOSADA (Colombia), Mr. MANONGI (United Republic of Tanzania) and Mr. ISKIT (Turkey) maintained their reservations concerning article 32.

75. Article 32 was adopted.

Article 33 and annex

76. Mr. ROSENSTOCK (Expert Consultant) recalled the amendment proposed by the Argentinian delegation, which, in his view, clarified the article. It involved inserting in paragraph 1, after the words "States concerned" the words "in the absence of agreement among them".

77. Ms. GAO Yanping (China) said that her delegation maintained that States were under obligation to resort to peaceful means of resolving their disputes, but were free to choose the form of such peaceful means. As the text under consideration failed to articulate accordingly the rights and obligations enshrined in the Charter of the United Nations, her delegation could not accept article 33 and requested that it should be put to the vote.

78. Mr. CAFLISCH (Observer for Switzerland) stated that in article 4, paragraph 2, of the annex to article 33, the words "the Secretary-General" should be replaced by the words "the President of the International Court of Justice".

79. The CHAIRMAN confirmed that the above correction was necessary and that the title "Annex" should be added to page 4 of the English version of document A/C.6/NUW/WG/L.3/Add.1, below the word "Arbitration".

80. Mr. RAO (India) and Mr. HAMID (Pakistan) associated themselves with the reservations expressed by the representative of China.

81. Mr. ISKIT (Turkey) said that his delegation would vote against article 33 and its annex on arbitration, as it believed it inappropriate that a framework convention should provide for compulsory measures for the settlement of disputes; that question should be left to the discretion of the States concerned.

82. Mr. SABEL (Israel), recalling that his delegation had expressed reservations concerning article 33, said that it would abstain.

83. Mr. KASME (Syrian Arab Republic) said that the text under consideration did not go far enough; there was a danger that differing interpretations could lead to a deadlock.

84. The CHAIRMAN asked the Working Group to make a decision first on the amendment proposed by the Expert Consultant.

85. The amendment to paragraph 1 was adopted.

86. At the request of the representative of China, a recorded vote was taken on article 33 and its annex.

In favour: Argentina, Austria, Bangladesh, Belgium, Brazil, Cambodia, Canada, Chile, Czech Republic, Denmark, Finland, Germany, Greece, Holy See, Hungary, Italy, Malaysia, Mexico, Mozambique, Namibia, Netherlands, Nigeria, Norway, Portugal, Republic of Korea, Romania, Russian Federation, South Africa, Spain, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Viet Nam.

Against: China, Colombia, France, India, Turkey.

Abstaining: Algeria, Bolivia, Bulgaria, Ecuador, Egypt, Ethiopia, Iran (Islamic Republic of), Israel, Japan, Jordan, Lebanon, Lesotho, Liechtenstein, Malawi, Mali, Pakistan, Rwanda, Slovakia, Sudan, Switzerland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, United Republic of Tanzania, Venezuela, Zimbabwe.

87. Article 33 and its annex were adopted by 33 votes to 5, with 25 abstentions.

88. Mr. GONZALEZ (France) explained that he had voted against the adoption of article 33 because he considered it incompatible with the purpose of a framework convention.

89. Ms. VARGAS de LOSADA (Colombia) said that she had voted, not against the notion of obligatory provisions, but against those provisions provided for in the text.

90. Mr. ENAYAT (Islamic Republic of Iran) said that, while his delegation had abstained from voting, it maintained its reservations.

Article 34

91. Article 34 was adopted.

Article 35

92. Ms. ORTAKOVA (The former Yugoslav Republic of Macedonia) said that the second sentence in paragraph 1 should be deleted, to enable her country to become a party to the Convention more swiftly.

93. Article 35, as amended by the representative of The former Yugoslav Republic of Macedonia, was adopted.

Article 36

94. The CHAIRMAN said that, in the text under consideration, the number of States which would have to deposit their instruments of ratification in order for the Convention to enter into force had been left in square brackets. Since no agreement had been reached, as yet, on the various solutions put forward, he proposed that the meeting should be suspended to enable consultations to be held.

95. The meeting was suspended at 5.30 p.m. and resumed at 5.55 p.m.

96. The CHAIRMAN, noting that no figure had been agreed upon, suggested that the Working Group should retain the one which had been mentioned most often during the consultations, namely, 35.

97. It was so decided.

98. Article 36 was adopted.

99. Ms. GAO Yanping (China), supported by Mr. AMER (Egypt) and Mr. ISKIT (Turkey), said that such an important convention should receive the support of the international community and should not enter into force until 60 instruments of ratification had been deposited, in order to achieve a certain balance between estuary States and source States; otherwise, it would be very difficult to implement the instrument.

Article 37

100. Article 37 was adopted.

Title of the Convention

101. The CHAIRMAN proposed that the title contained in General Assembly resolution 51/206, namely "Convention on the law of the non-navigational uses of international watercourses", should be adopted. He reminded those delegations which had expressed the wish to include the expression "framework convention" in the title that the preamble set out a frame of reference in that respect, and that article 3 governed relations between the convention and current or future watercourse agreements.

102. Mr. AMER (Egypt) said that, while he would not oppose the Chairman's suggestion, he would have preferred the title to include the expression "framework convention".

103. The title of the Convention was adopted.

104. Mr. ISKIT (Turkey) concluded from the discussion that there was no consensus on the major or fundamental provisions and articles of the draft convention. While the latter expressed essential principles and concepts on issues such as equitable, reasonable and optimal utilization, as a whole it remained unacceptable to the Turkish delegation, which had expressed objections or reservations concerning the preamble, article 2, paragraphs (a) and (b), article 3, article 10, the whole of part III except for article 11, articles 22, 23 and 32, and article 33 and its annex. His delegation therefore requested a vote on the draft convention as a whole, and wished to explain before the voting the fundamental reasons for its decision to oppose it.

105. Firstly, the draft convention was broader than had been intended in General Assembly resolution 51/206; it should have merely established general principles, the application of which would be determined by means of specific agreements taking account of the particular characteristics of each watercourse. Secondly, the draft convention made no mention of the indisputable principle of the sovereignty of the watercourse State over the parts of the international watercourse located in its territory. Thirdly, the draft convention should have clearly established the supremacy of the fundamental principle of equitable and reasonable utilization over the obligation not to cause significant harm, which would have avoided any confusion regarding the implementation of the text as a whole. Fourthly, and contrary to what should be the case with a framework convention, the draft convention established a mechanism for the planned measures which had no basis in general and customary international law, and which created an obvious imbalance among States by setting up an obligation to obtain prior approval, which was equivalent to a right of veto for a State belonging to one category over measures planned by a State belonging to another category. Fifthly and lastly, a framework convention was not the appropriate place for setting out obligatory dispute settlement rules; the latter should be left to the discretion of the States concerned. In conclusion, the Republic of Turkey considered that the draft convention on the law of the non-navigational uses of international watercourses was and would remain without legal effect in general and customary international law.

106. Mr. GONZALEZ (France), speaking on a point of order, said that, pursuant to articles 78 and 120 of the rules of procedure of the General Assembly, the Working Group could not make a decision on the draft convention as a whole, since its text had not been distributed the previous day in any of the official languages.

The meeting was suspended at 6 p.m.